

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KERRITH DUVALL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	NO. CIV-18-181-HE
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Robert E. Cotner, a state prisoner appearing *pro se*, filed this § 1983 action alleging violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Suzanne Mitchell for initial proceedings. Judge Mitchell has issued an Amended Report and Recommendation (the “Report”) recommending that plaintiff’s motion to proceed *in forma pauperis* be denied because plaintiff is subject to the three strikes rule of 28 U.S.C. § 1915(g). Plaintiff has filed a Motion to Strike Magistrate’s Report and Recommendation and a Motion to Strike Amended Report and Recommendation, which the court construes as objections to the Report triggering *de novo* review of the issues objected to.

Plaintiff contends that the United States Court of Federal Claims found, in a different case filed by these plaintiffs, that he does not have three “strikes” against him. He also contends that Judge Mitchell should be disqualified from any cases involving him and that there is no proof that he has accumulated three strikes sufficient to trigger the constraints of § 1915(g).

Contrary to plaintiff's argument, the Court of Federal Claims case he refers to, Duvall, et al. v. United States, No. 17-1788C, did not address any question as to the presence or absence of three strikes. It simply concluded that it lacked jurisdiction over plaintiff's claims.

The remainder of plaintiff's objections are essentially attacks on the magistrate judge or conclusory assertions as to whether he has three strikes.¹ None of which rebut the fact that plaintiff has accumulated significantly greater than three actions or appeals "in a court of the United States that [were] dismissed on the grounds that it [was] frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Further, plaintiff has not alleged facts suggesting he "is under imminent danger of serious injury." *Id.*

Accordingly, the Amended Report and Recommendation [Doc. #16] is **ADOPTED** and Plaintiff's Motion to proceed *in forma pauperis* [Doc. #9] is **DENIED**. Plaintiff's claims will be dismissed unless he pays the full \$400 filing fee within twenty-one days from the date of this order. Plaintiff's Motion for Order for Settlement Conference [Doc. #8] and Motion for Hearing [Doc. #10] are **DENIED**.

IT IS SO ORDERED.

Dated this 23rd day of March, 2018.


JOE HEATON
CHIEF U.S. DISTRICT JUDGE

¹ Plaintiff's Motion to Strike Amended Report and Recommendation states that he is no longer a plaintiff and never brought this action. But, elsewhere, it argues that the Report is moot.